And again at page 458:—

> "Domicil of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time. This is a description of circumstances which create or constitute a domicil, and not a definition of the term. There must be a residence freely chosen, and not prescribed or dictated by any external necessity, such as the duties of office, the demands of creditors, or the relief from illness; and it must be residence fixed not for a limited period or particular purpose, but general and indefinite in its future contemplation."

Now I have no doubt that the petitioner is perfectly sincere in his declaration that he intends to stay on Bhutan Estate as long as possible. But I do not think that this is strong evidence of his intention to choose a domicil in Selangor because his residence there is dictated by the necessity of earning his living, and, as he admits himself, it must come to an end. He says:—

> "When I have to retire I propose to settle in this country, but I have made no plans about that. That is my fixed intention."

As to the value of such a declaration see the judgment of Merrivale, P. in *Bryce* v. *Bryce*, (1933) P. 83, at page 85:—

> "I have considered in the light of the authorities what weight should be attached to evidence of declarations of intention."

And he goes on to cite a dictum of Dr. Lushington in *Hodgson* v. *De Beauchesne*, (1858) 12 Moo., P. C. 285, at page 325:—

> "Such evidence, though admissible, has been considered by many authorities as the lowest species of evidence."

See also Lord Buckmaster's remarks in *Ross* v. *Ross*, (1933) A.C. 1, at page 6 and Elphinstone, C.J. in *David* v. *David*, Selangor Divorce, No. 3 of 1931 (unreported) where he says:—

> "I feel that I cannot disregard the fact that the temptation for a person in the position of the petitioner who desires to obtain a divorce to say that he has changed his domicil must be very great."

But anyhow I do not think the intention is sufficiently definite. He must show an *animus manendi* in Selangor, and I cannot deduce from his words an intention of settling in Selangor to the exclusion of the rest of Malaya. There may be suitable places in Selangor for the inhabitant of a temperate climate to spend his declining years, but of the places where we might expect a European to take up a permanent abode Fraser's Hill is very largely and Cameron's Highlands wholly in Pahang. It seems to me that there cannot be inferred from his words more than a vague intention to settle somewhere in Malaya, or at the highest somewhere in the Federated Malay States. But even that is not enough. I come to the conclusion, therefore, that this petition should be dismissed.

Petition dismissed.

[APPELLATE CIVIL JURISDICTION.]

BURTON, J.

September 20, 1934.

G. H. S. FRIPP.....Appellant.

v.

A. B. NICHOLAS.....Respondent.

[SELANGOR MAGISTRATE'S CIVIL APPEAL No. 27 of 1934]

Clerk-conductor of rubber estate occupying house on the estate—Tenancy at will—Termination of tenancy by dismissal from the estate—Forcible ejectment.

The appellant and respondent were respectively manager and clerk-conductor of a rubber estate. The respondent was given the option of occupying a house on the estate or a house in the village and receiving $25/- per month towards the rent. Respondent chose the former alternative and occupied a house on the estate.

On the 6th April, 1934, appellant summarily dismissed the respondent and ordered him to leave the estate forthwith. Respondent did not comply with this order and was forcibly ejected from his house by the appellant on the 7th April, 1934.

On appeal from the decision of the Magistrate awarding damages in respect of this forcible ejectment:—

Held, that the respondent held the tenancy of the house whilst he was clerk-conductor as a tenant at will and that on receiving notice of dismissal his tenancy was determined.

By remaining he became a trespasser and could have no right of action against the appellant for forcible ejectment.

B. J. P. Joaquim for the appellant.

S. M. Sharma for the respondent.

Cur. Ad. Vult.

BURTON, J.—This is an appeal from the judgment of the Magistrate, Kajang, awarding the sum of $500/- damages against the appellant for forcibly ejecting him from his house on Rinching Estate.

The respondent was engaged as Clerk and Conductor on the estate in August, 1933, by the predecessor of the appellant at a salary of $100/- a month. He has a wife and nine children to support and the question arose as to the accommodation of his family. It would appear that the house usually occupied by the conductor was not large enough for the respondent and his family, and after negotiations, during which he was

offered the option of renting a house in the village and receiving an allowance of $25/- a month towards the rent, it was arranged finally that he should occupy the house with which we are now concerned.

On 1st March, 1934, the appellant took over the management of Rinching Estate, and on 6th April he summarily dismissed the respondent and told him to leave the estate forthwith. On 7th April, he forcibly ejected him from the house; and it is in respect of this forcible ejectment that the Magistrate has awarded the respondent damages. The findings of fact of the Magistrate in this case are not attacked; the sole question is whether he was correct in law in so awarding damages.

It is, I think, clear law in England that no action for damages lies against a landlord who forcibly ejects a tenant after the expiry of the term, provided that he uses no more force than is necessary—see *Hemmings* v. *Stoke Poges Golf Club*, (1920) 1 K.B. 720, his right of entry being a defence to civil proceedings. I think that the law is the same here, for while in England the landlord commits an indictable offence under 5 Ric. 2 Stat. 1 c. 7, I very much doubt if he could be charged with any offence in this country.

It is necessary, therefore, to determine first of all whether the appellant had the right to eject him, and consequently we must discover the nature of the tenancy upon which the respondent held. I do not think that he was in occupation of the premises in the course of his employment. The Magistrate has found the facts against this, and I think correctly, that the previous manager gave the respondent the option of living off the estate and renting a house in the village. He was not, therefore, required to live in this house, and he does not come within the class of cases of which *Mayhew* v. *Suttle*, (1854) 4 E. & B. 347, is an example, where the relationship of landlord and tenant is not created at all. I think that this relationship was created but that the respondent was a tenant at will and that his tenancy was determined by his dismissal from the estate. It is of no importance whether he was wrongfully or rightfully dismissed. It has been held in another action that he was wrongfully dismissed; but he has his remedy for the wrongful dismissal in the other action, and if he has been dismissed and notice of the termination of his tenancy given, the tort of his wrongful dismissal does not extend to corrupt the termination of the tenancy.

As I see this case the two causes of action are quite distinct. He held the tenancy of the house while he was clerk-conductor as a tenant at will, and on the morning of the 6th April he was given notice to leave the estate. This was sufficient to determine the tenancy at will, and he remained on as a trespasser; and consequently no right of action lies against the appellant for forcible ejection because the tenancy had already been determined.

I think, therefore, the appeal should be allowed, and the judgment of the Magistrate set aside, and judgment entered for the defendant. The appellant must have costs here and below.

Appeal allowed.

[APPELLATE CIVIL JURISDICTION]

THOMAS, C.J.

September 24, 1934

HARNAM SINGH.....Appellant.

v.

HO SENG.....Respondent.

[SELANGOR MAGISTRATE'S CIVIL APPEAL No. 28 of 1934.]

The Land Code, 1926, sub-section 42 (v)—Yearly tenancy of land—Length of notice to determine such tenancy.

The respondent occupied land belonging to A for a number of years at a yearly rental of $72 and it was agreed that the tenancy could be determined by one year's notice. The respondent built two houses on this land at a cost of $1,400 and expended about $300 in improving the land.

Subsequently the appellant purchased this land and gave the respondent one month's notice of determination of his tenancy, contending that inasmuch as the terms of the agreement between the respondent and A provided for a notice of one year, the term of the tenancy must have been in excess of one year, and consequently such agreement was invalid because it had not been registered under the Land Code, 1926.

Held, that the Land Code, 1926, does not in any way prevent two persons from agreeing that a yearly tenancy may be determined on whatever notice they please and that in view of the provisions of sub-section 42 (v) of the Land Code the respondent was entitled to a full year's notice from the appellant.

B. J. P. Joaquim and *T. T. Bok* for the appellant.

G. A. Hereford for the respondent.

Cur. Ad. Vult.

THOMAS, C. J.—This is an appeal from the judgment of the learned Magistrate of Kuala Kubu Bharu, dismissing the suit of the appellant.

In this suit the appellant claimed that a piece of land together with two houses erected thereon should be delivered up to him, one month's rent of $20, further rent until delivery, and damages. From the evidence it appears that the land in question was sold by one Haji Mohamed to the appellant on or about the 12th of September, 1932. Haji Mohamed has since died. In 1928 Haji Mohamed had allowed the respondent to build two houses on part of his land. This was done at a cost of $1,400. Some $300 were also expended in filling up the land